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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,143

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Dominique M. Richard

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EXAMINER

DUNHAM, JASON B

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

11/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/686,143	Applicant(s) RICHARD ET AL.	
	Examiner Jason B. Dunham	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application |
| 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant amended claim 22 in the amendment filed September 17, 2007 in reply to the office action dated April 16, 2007. Applicant's amendment rendered the previous objection to claim 22 moot. Claims 1-24 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Kraisser (US 2002/0147654).

Referring to claim 1. Kraisser discloses a scheduling and routing system for delivering a consumable to customers via commercial delivery vehicles, comprising:

- A delivery forecasting systems that maps certain customers to delivery profiles for similarly situated customers to provide variable statistical parameters for inventory replenishment of the consumable (Kraisser: abstract and paragraphs 60-61); and

- An integrated inventory replenishment, scheduling, and routing system that generates a delivery route for a commercial delivery vehicle based on said statistical parameters and other variable parameters including road routing economics of making several deliveries in sequence before replenishment of the commercial delivery vehicle (Kraisser: paragraph 112).

Referring to claim 2. Kraisser further discloses a system wherein the integrated inventory replenishment, scheduling, and routing system includes an algorithm for optimal route generation and an algorithm for optimal delivery day selection, said optimal route generation and optimal delivery day selection algorithms being integrated so as to allow a global optimization with cost trade offs among penalties for running out of the consumable, the costs of multiple trips to delivery the consumable over the long term for an individual customer, and the daily costs of time and miles on the road for executing a route to deliver the consumable to a number of different customers (Kraisser: paragraphs 107 & 112).

Referring to claims 3-4. Claims 3-4 are rejected under the same rationale set forth above as Kraisser discloses methods containing similar limitations to those of the system claims 1-2 (Kraisser: abstract).

Referring to claim 5. Kraisser further discloses a method wherein days on which deliveries can be made is variable so as to increase the number of possible route assignments for a given delivery (Kraisser: paragraph 107).

Referring to claim 6. Kraisser further discloses a method wherein the forecasting step includes the step of creating at least one consumption parameter unique to the customer and a variance term (Kraisser: paragraph 60).

Referring to claim 7. Kraisser further discloses a method comprising the step of assigning priorities to customers to dictate the order in which commercial vehicle capacity is exhausted (Kraisser: paragraph 77).

Referring to claims 8-12. Claims 8-12 are rejected under the same rationale set forth above as Kraisser discloses computer readable mediums containing computer executable instructions with similar limitations to those of the system claims 1-2 and method claims 5-7 (Kraisser: paragraph 19).

Referring to claim 13. Claim 13 is rejected under the same rationale set forth above in the rejection of claim 1. Kraisser further discloses a delivery forecasting system for providing periodically scheduled services (Kraisser: paragraph 82). The examiner notes that Kraisser discloses delivering goods to customers who regularly order a specified amount of goods from a distributor.

Referring to claims 14-18. Claims 14-18 are rejected under the same rationale set forth above in the rejection of claims 1-2 and 13.

Referring to claim 19. Kraisser further discloses a system wherein the variable statistical parameters included an expected consumption parameter and an estimate of the variability of the expected consumption parameter (Kraisser: paragraph 77).

Referring to claim 20. Kraisser further discloses a system wherein the other variable parameters include a routing horizon over which customers are routed,

availability of the commercial delivery vehicle, and a range of allowable days for delivery (Kraisser: paragraph 107).

Referring to claims 21-24. Claims 14-18 are rejected under the same rationale set forth above in the rejection of claims 19-20.

Response to Arguments

Applicant's arguments filed September 17, 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the claimed systems, methods, and mediums have a different purpose, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The systems, methods, and mediums of Kraisser anticipate a scheduling and routing system for delivering a consumable to customers via commercial delivery vehicle.

Applicant further argues that the claimed invention is directed towards the delivery of propane. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., delivery of propane) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's claims recite the delivery of consumables,

which given the its broadest reasonable meaning would include the delivery of groceries, as disclosed by Kraisser. Furthermore, the recitation of "delivery profiles", "assigning priorities", and "variable statistical parameters" within the claims (claims 1,3, and 7) is anticipated by Kraisser in the disclosure of delivering to "gold" customers (paragraphs 77-86) before delivering to "silver" customers while maximizing delivery capacity. The examiner recommends better defining the consumable and specific customer requirements (i.e. last possible time the consumable can be received based on usage history) if the applicant wishes to pursue further prosecution.

Applicant further argues that Kraisser limits deliveries to a particular time window. The examiner notes that Kraisser optimizes the delivery system by only allowing particular deliveries in specific windows that meet for example, cost thresholds, similar to the applicant's claimed invention of optimizing delivery days (claims 2, 4, and 5). Applicant's is further encouraged to recite the limitations of customer's consumption history (versus a parameter in claim 6 such as amount of consumable bought) and demand ("elimination rate of inventory") and varying customer priority within the claims.

Applicant further argues that paragraph 112 of Kraisser does not disclose an "integrated inventory replenishment, scheduling, and routing system". The examiner notes that above cited paragraph 112 was intended to point out particular embodiments of the prior art (such as optimized routing of delivery vehicles) and not intended to be limiting. The prior art must be considered as a whole. Given Its broadest reasonable meaning, inventory replenishment is anticipated by consumers buying new groceries (i.e. consumables).

Applicant's arguments regarding claims 13,15, and 17 are rejected under the same rationale set forth above regarding the definition of "variable statistic parameters". Applicant's arguments regarding claims 19, 21, and 23 are rejected under the same rationale set forth above regarding the definition of "consumption parameter". Applicant's arguments regarding claim 20 are rejected under the same rationale set forth above regarding the time window selection of Kraisser and applicant's optimum delivery day. Furthermore, applicant's paragraph 44 in the specification defines a routing horizon as a cost trade-off function for each customer, similar to the cost analysis performed in Kraisser. The applicant is narrowly defining these terms and not giving them their broadest reasonable meaning.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Application/Control Number:
10/686,143
Art Unit: 3625

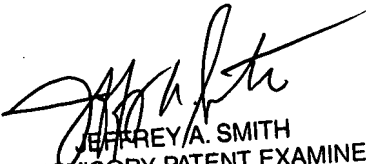
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason B. Dunham whose telephone number is 571-272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JBD
Patent Examiner
11/20/07


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